

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KAO LEE YANG, et al.,

v.

CHERAMIE MARINE, LLC, et al.

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CIVIL ACTION NO. H-18-161

**DEFENDANTS TEICHMAN GROUP, LLC AND T&T OFFSHORE INC.’S
SECOND NOTICE OF NONCOMPLIANCE AND MOTION FOR RELIEF**

Defendants Teichman Group, LLC and T&T Offshore, Inc., misnamed in Plaintiff’s petition as “T&T Marine, Inc.” (collectively, the “T&T Defendants”), file this Second Notice of Noncompliance and Motion for Relief.

I. Introduction

Following the denial of his petition for writ of mandamus filed in the Fifth Circuit, Plaintiff Marcus Wilson now proceeds as if the appellate court granted him the mandamus relief he requested.

In his petition for writ of mandamus, Wilson asked the appellate court to hold that this Court has no authority to order him to nonsuit his state court case. The appellate court declined to grant mandamus relief “on an argument not squarely made to the district court.” (*See* Exhibit 1.) Now, rather than nonsuit or make his argument squarely to this Court, on July 16, 2018, Wilson served on the T&T Defendants requests for production in the state court case. (*See* Exhibit 2.) Since that time, the T&T Defendants participated in a formal mediation with Wilson and engaged in follow-up negotiations – in the hope that this notice would prove unnecessary. As the T&T Defendants’ counsel has confirmed today, those negotiations have proved fruitless.

In light of Wilson's action in propounding discovery and his failure to nonsuit the state court case, the T&T Defendants file this second notice of non-compliance and request that the Court relieve them of the obligation to participate in the state court proceeding and grant other such relief that the Court finds appropriate.

II. Basis for Notice & Request for Relief

The Fifth Circuit's Order denying mandamus relief contrasted the positions that Wilson took in this Court and in the court of appeals. The Fifth Circuit explained: "What is clear . . . is that Wilson never argued to the district court that it was acting beyond its power; he only argued that the state court case was not sufficiently duplicative to warrant injunction." (Exhibit 1.) As a result, the appellate court refused to grant relief "on an argument not squarely made" to this Court. (Exhibit 1.)

Neither before nor after filing his mandamus petition did Wilson squarely present the argument he made to the appellate court to this Court. Quite the opposite, in this Court, he effectively agreed to nonsuit the state court case.

At the April 19, 2018, hearing on the T&T Defendants' motion to enjoin the state court proceeding, the Court gave Wilson an opportunity to voluntarily dismiss his state court lawsuit in lieu of issuing an injunction. (Doc. 58-2 at 8-9 & 18.) Wilson's counsel appeared to accept the Court's suggestion to dismiss the case in lieu of an injunction. Wilson's counsel responded to the Court's offer as follows:

Mr. Leavitt: Fair enough. I'm ordered to dismiss or nonsuit the state court case and add WL Crane and T&T Offshore as defendants into the current case before the Court. And I presume I don't need to file a motion for leave to do so?

The Court: No, you've just done it, and it's granted.

Mr. Leavitt: Certainly.

(Doc. 58-2 at 31.)

Later, rather than acting in accordance with his agreement, Wilson filed a motion to reconsider the Court's ruling on the motion to enjoin state court proceedings. (Doc. 58.) This Court denied the motion. (Doc. 61). As a result of Wilson's on-going failure to dismiss the state court action, the T&T Defendants filed a Notice of Noncompliance to alert the Court of Wilson's inaction. (Doc. 62.) Five days later, on June 27, 2018, Wilson filed a petition for writ of mandamus, which asked the Fifth Circuit to vacate this Court's "order requiring Wilson to nonsuit his state-court lawsuit." (Mandamus Pet. at 18.) The Fifth Circuit denied mandamus review on July 12, 2018. Wilson's next action was to propound discovery in the state court case. (*See* Exhibit 2.)

Wilson has never argued to this Court that it does not have the authority to order a nonsuit. Having failed to raise this argument, the Court should hold Wilson to his agreement. At a minimum, before ignoring the Court, Wilson should be ordered to come before this Court to attempt to demonstrate why it does not have the power to act.

III. Prayer for Relief

Accordingly, the T&T Defendants ask this Court to hold Wilson to his agreement to dismiss the post-removal state-court case, or at a minimum, direct that Wilson appear before this Court to squarely present his argument that the Court does not have the power to act. Alternatively, the T&T Defendants ask this Court to relieve the T&T Defendants from participation in the post-removal proceeding by enjoining the state-court case.

Respectfully submitted,

/s/ Susan Noe Wilson

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served upon counsel of record accordance with the Federal Rules of Civil Procedure, via e-service, facsimile and/or certified mail, return receipt requested to the following on the 7th day of August 2018:

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